

## JUDICIARY

DATE 1-11-07

[illegible]



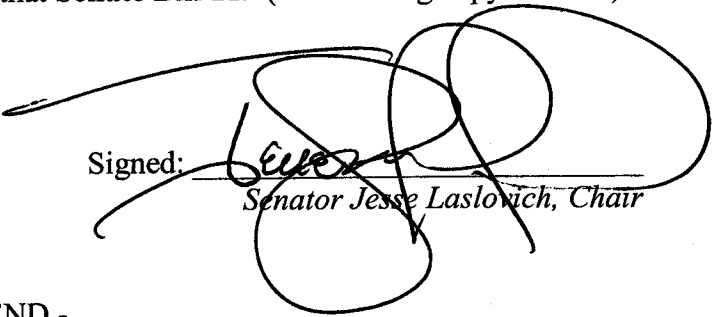
## SENATE STANDING COMMITTEE REPORT

January 11, 2007

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Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 119** (first reading copy -- white) do pass.

Signed: 

*Senator Jesse Laslovich, Chair*

- END -

Committee Vote:

Yes 12, No 0

Fiscal Note Required 

071219SC.spb



## SENATE STANDING COMMITTEE REPORT

January 11, 2007

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Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 85** (first reading copy - white) do pass.

Signed: \_\_\_\_\_

*Senator Jesse Laslovich, Chair*

- END -

Committee Vote:

Yes 11, No 1

Fiscal Note Required \_\_\_\_\_

K7

071218SC.spb

SB119 y SB

## SENATE PROXY FORM

According to Senate Rule 30-70 ( 13) ( f ) , a committee member may vote by proxy using a standard form.

### PROXY VOTE

I, the undersigned, hereby authorize Senator Moss

to vote my proxy on any issue before the Senate \_\_\_\_\_

\_\_\_\_\_ Committee

held on \_\_\_\_\_, 2007.

David Pearson  
SENATOR  
STATE OF MONTANA

## SENATE PROXY FORM

According to Senate Rule 30-70 ( 13) ( f ) , a committee member may vote by proxy using a standard form.

### PROXY VOTE

I, the undersigned, hereby authorize Senator Lastovich

to vote my proxy on any issue before the Senate Judiciary

\_\_\_\_\_ Committee

held on January 11, 2007.

SB 119 Yes

Larry Jent  
SENATOR  
STATE OF MONTANA

SB119 Y SB 85 Y

## SENATE PROXY FORM

According to Senate Rule 30-70 ( 13) ( f ) , a committee member may vote by proxy using a standard form.

### PROXY VOTE

I, the undersigned, hereby authorize Senator Lynnda Morris  
to vote my proxy on any issue before the Senate Judiciary  
\_\_\_\_\_ Committee

held on \_\_\_\_\_, 2007.

Carol M. McLean  
SENATOR  
STATE OF MONTANA

MONTANA STATE SENATE  
2007 LEGISLATURE

VISITOR REGISTER

JUDICIARY

DATE January 11, 2007

BILLS BEING HEARD TODAY SB 49, 86, 87, 119

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Shirley K Brown	444-5906	DPHHS - CFSD	SB49	X	
Roland M. Mena	444-3615	MBCC	SB119	X	
Rita Blouke	442-9135	League of Women Voters	SB 96/97		X
Sheryl Wood	444-4320	MT Assoc of Counties	SB119	X	
Lily Yamamoto	444-1610	MBCC	SB119		
Debra Silk	442-2180	MT33A	SB49		Y

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

## DNA

In the forensic analysis of DNA, statistical estimates are relied upon to determine the rarity of a particular DNA profile. If a single source, unknown DNA profile is the same as a known DNA profile at every marker (15 plus a sex marker), that is considered a "match". To estimate the power of that match, a statistical calculation is performed that is based on how common the profile is in a population. We use a program developed by the FBI that is generally accepted in the forensic community for our statistical frequency calculations. This program provides frequency data for 13 of the 15 markers that the Montana State Crime Laboratory analyzes. A typical frequency for a single source, full DNA profile is about 1 in 1 trillion, although it can be as infrequent as 1 in 1 quintillion. This means that if a person is chosen at random from a population of unrelated people, that particular DNA profile would be expected to be seen once in 1 trillion people. (For reference, the world's current population is approximately 6.5 billion.) So the strength of the match lies in the fact that the known individual shares the same profile as the unknown profile and that the profile would be expected only once in 1 trillion people (barring identical twins). This does not mean that someone else doesn't have the same profile, but it does mean that it is extremely unlikely.

All of the techniques, chemistry, and instrumentation that are currently used in the field of forensic DNA analysis have been thoroughly validated, peer reviewed, and accepted in the scientific community. In order to participate in the national DNA database, the Montana State Crime Laboratory must follow strict federal guidelines with regard to forensic DNA analysis to ensure that our results are reliable.

### For Reference

1 Billion:	1,000,000,000
<i>World's</i>	
<i>population:</i>	6,500,000,000
1 Trillion:	1,000,000,000,000
1 Quintillion:	1,000,000,000,000,000,000



*Pat. Jud.*

SENATE BILL NO. 49

INTRODUCED BY J. ESP

BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING TO A RELATIVE WHO IS A CARETAKER BUT NOT A PARENT OF A CHILD THE POWER TO ENROLL THE CHILD IN SCHOOL, DISCUSS CERTAIN SCHOOL-RELATED MATTERS, AND CONSENT TO SCHOOL-RELATED MEDICAL CARE UNDER CERTAIN CONDITIONS; PROVIDING FOR A CARETAKER RELATIVE EDUCATIONAL AUTHORIZATION AFFIDAVIT; PROVIDING FOR GOVERNMENTAL IMMUNITY; AMENDING SECTIONS 1-1-215, 20-5-412, 20-5-420, AND 72-5-103, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Purpose -- legislative intent -- parental rights -- definitions.** (1) The legislature recognizes that the rights of parents to the custody and control of a child are based upon liberties secured by the United States and Montana constitutions and that a parent's rights to that custody and control of a child are therefore normally supreme to the interests of other persons. The legislature also recognizes a growing phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and care of their children to a grandparent or other relative for lengthy periods of time. Regardless of the purpose of the absence, a child willfully surrendered to a relative for an extended time period still has the same needs as a child in the care of its parents. In this situation, a caretaker relative assumes responsibilities for the child but has no legal right of control over the child, a situation that interferes in the caretaker relative's ability to perform routine functions of child rearing, including tending to the educational and educationally related medical needs of the child. It is therefore the purpose of the legislature in these instances to protect the rights of a child granted by Article II, section 15, of the Montana constitution by granting a caretaker relative limited authority for a child left in the relative's care.

(2) It is the intent of the legislature that a caretaker relative given the responsibility of caring for a child with little or no warning and without any other provision having been made for the child's care, such as the appointment of a guardian or the provision of a power of attorney, be granted authority to enroll the child in school, discuss with the school district the child's educational progress, and consent to an educational service

1 and to medical care for the child related to an educational service without superseding any parental rights  
2 regarding the child.

3 (3) [Sections 2 and 3] and this section are not intended to affect the rights and responsibilities of a  
4 parent, legal guardian, or other custodian regarding the child, do not grant legal custody of the child to the  
5 caretaker relative, and do not grant authority to the caretaker relative to consent to the marriage or adoption of  
6 the child or to receive notice of a medical procedure, including abortion, not consented to by the relative, if notice  
7 is required by law, for the child except as expressly provided in this section.

8 (4) For the purposes of [sections 2 and 3] and this section, the following definitions apply:

9 (a) "Caretaker relative" or "relative" means an individual related by blood, marriage, or adoption by  
10 another individual to the child whose care is undertaken by the relative, but who is not a parent, foster parent,  
11 stepparent, or legal guardian of the child.

12 (b) "Caretaker relative educational authorization affidavit" or "affidavit" means an affidavit completed in  
13 compliance with [section 3].

14 (c) "Health care provider" means a person who provides medical care.

15 (d) "Medical care" means care, by a health care provider for which parental consent is normally required,  
16 for the prevention, diagnosis, or treatment of a mental, physical, or dental injury or disease that is needed to  
17 prevent serious bodily harm or death to the child.

18 (e) "Parent" means a biological or adoptive parent or other legal guardian of the child.

19

20 **NEW SECTION. Section 2. Enrollment by caretaker relative -- residency -- affidavit.** (1) A caretaker  
21 relative of a child who has voluntarily been given custody of the child by a parent of the child may enroll the child  
22 in school, using the rules of residence provided in 1-1-215, if:

23 (a) in leaving the child with the caretaker relative, the parent expressed no definite time period in which  
24 the parent would return for the child;

25 (b) the child is residing with the caretaker relative on a full-time basis;

26 (c) the caretaker relative is unable to contact the parent following the voluntary leaving of the child with  
27 the relative or the parent refuses to regain custody of the child after a written request by the relative to do so;

28 (d) no adequate provision, such as the appointment of a guardian ad litem or execution of a power of  
29 attorney, has otherwise been made for the educational needs of the child; and

30 (e) a caretaker relative educational authorization affidavit is completed in compliance with [section 3].

(2) The school district may require additional reasonable evidence that the caretaker relative lives at the address provided in the affidavit.

**NEW SECTION. Section 3. Caretaker relative educational authorization affidavit -- use -- immunity -- format.** (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child has the same authority as a custodial parent of the child to discuss with an educator the educational progress of the child, consent to an educational service, and consent to medical care related to an educational service for the child for which parental consent is usually required if a caretaker relative educational authorization affidavit is completed in compliance with this section.

(2) An affidavit is effective only if it is signed by the caretaker relative, under oath, before a notary public. A clear photographic copy of an affidavit completed in compliance with this section is sufficient in any instance in which an original is required by a school official or health care provider.

(3) Unless parental rights have been judicially terminated or unless the ability to give legal consent for the child to receive an educational service and any medical care related to the educational service for which parental consent is usually required has been granted to the caretaker relative pursuant to 40-4-211 and 40-4-228, a decision by a parent of the child communicated to a school official, a health care provider, or both, regarding the child supersedes a conflicting decision by a caretaker relative made pursuant to an affidavit completed in compliance with this section. However, a decision by a parent does not supersede a decision by a relative pursuant to an affidavit completed in compliance with this section if the decision by the parent endangers the life of the child. A school official or health care provider may require reasonable proof of authenticity of a decision by a parent intended to supersede a decision by a caretaker relative.

(4) (a) A [public or] private entity or individual who acts in good faith reliance on a caretaker relative educational authorization affidavit completed in compliance with this section who has no actual knowledge of facts contrary to those indicated in the affidavit is not subject to civil liability or criminal prosecution or to a professional disciplinary procedure for an action that would have been proper if the facts had been as the entity or individual believed them to be.

(b) This subsection (4) applies even if an educational service or educationally related medical care, or both, are provided to a child against the wishes of a parent of that child if the person rendering the service does not have actual knowledge of the parent's wishes.

(5) A person who relies on an affidavit completed in compliance with this section has no obligation to

1 make further inquiry or investigation.

2 (6) An affidavit completed in compliance with this section is effective for the earlier of:

3 (a) 6 months;

4 (b) until it has been revoked by the caretaker relative; or

5 (c) until the child no longer resides with the caretaker relative.

6 (7) If the child ceases to live with the caretaker relative or the caretaker relative revokes the affidavit,  
7 the caretaker relative shall provide written notice of that fact to all persons to whom the caretaker relative has  
8 given the affidavit or to whom the caretaker relative has caused the affidavit to be given.

9 (8) This section does not relieve a person from a violation of other law, and this section does not affect  
10 the rights of a child's parent except as provided in this section.

11 (9) A caretaker relative completing an affidavit in compliance with this section shall send a copy of the  
12 affidavit to the local and state offices of the department of public health and human services. The department shall  
13 treat the affidavit as an allegation of abandonment of the child.

14 (10) A caretaker relative educational authorization affidavit is invalid unless it is written in substantially  
15 the following form and contains the warning provided for in paragraph 5 of the format below:

16 CARETAKER RELATIVE'S

17 EDUCATIONAL AUTHORIZATION AFFIDAVIT

18 Use of this affidavit is authorized by [this section].

19 1. INSTRUCTIONS: The completion and signing of the affidavit before a notary public are sufficient to  
20 authorize educational enrollment and services and school-related medical care for the named child. Please print  
21 clearly.

22 The child named below lives in my home, and I am 18 years of age or older.

23 a. Name of child:

24 b. Child's date of birth:

25 c. My name (caretaker relative):

26 d. My home address:

27 e. My relationship to the child (the caretaker relative must be an individual related by blood, marriage,  
28 or adoption by another individual to the child whose care is undertaken by the caretaker relative, but who is not  
29 a parent, foster parent, stepparent, or legal guardian of the child):

30 2. I hereby certify that this affidavit is not being used for the purpose of circumventing school residency

1 laws, to take advantage of a particular academic program or athletic activity, or for an otherwise unlawful purpose.

2 3. My date and year of birth:

3 4. Check the following if true (all must be checked for this affidavit to apply):

4 ☐ A parent of the child identified in paragraph 1a of this affidavit has left the child with me and has expressed  
5 no definite time period when the parent will return for the child.

6 ☐ The child is now residing with me on a full-time basis.

7 ☐ I am unable to locate or contact the parent of the child at this time to notify that parent of my intended  
8 authorization, or the parent refuses to regain custody of the child even though I have asked in writing that the  
9 parent do so.

10 ☐ No adequate provision, such as appointment of a guardian ad litem or execution of a power of attorney, has  
11 been made for enrollment of the child in school, other educational services, or educationally related medical  
12 services.

13 5. WARNING: DO NOT SIGN THIS FORM IF ANY OF THE STATEMENTS ABOVE ARE INCORRECT,  
14 OR YOU WILL BE COMMITTING A CRIME PUNISHABLE BY A FINE, IMPRISONMENT, OR BOTH.

15 6. I declare under penalty of false swearing under the laws of Montana that the foregoing is true and  
16 correct.

17 Signed this \_\_ day of \_\_\_\_\_, 20\_\_.

18 \_\_\_\_\_

19 (Signature of caretaker relative)

20 \_\_\_\_\_

21 (Signature, county, state, and seal of notary public)

22 7. NOTICES:

23 a. Completion of this affidavit does not affect the rights of the child's parent or legal guardian regarding  
24 the care, custody, and control of the child and does not mean that the caretaker relative has legal custody of the  
25 child.

26 b. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.

27 c. This affidavit is not valid for more than 6 months after the date on which it is signed by the caretaker  
28 relative.

29 8. ADDITIONAL INFORMATION:

30 a. TO CARETAKER RELATIVES:

1 If the child stops living with you, you shall notify anyone to whom you have given this affidavit, as well as anyone  
2 who received the affidavit from someone else.

3 b. TO [PUBLIC AND] PRIVATE SCHOOL OFFICIALS AND [PUBLIC AND] PRIVATE HEALTH CARE  
4 PROVIDERS:

5 (1). A [public or] private school official [or a public school district official] may require additional  
6 reasonable evidence that the caretaker relative lives at the address provided in item 1d of the affidavit form.

7 (2). A [public or] private entity or individual who acts in good faith reliance upon a caretaker relative  
8 educational authorization affidavit to enroll a child in school or to provide educational services or educationally  
9 related medical care, or both, without actual knowledge of facts contrary to those indicated in the affidavit, is not  
10 subject to criminal prosecution or civil liability to any person, or subject to any professional disciplinary action, for  
11 reliance on an affidavit completed in compliance with [this section].

12  
13 **Section 4.** Section 1-1-215, MCA, is amended to read:

14 **"1-1-215. Residence -- rules for determining.** Every person has, in law, a residence. In determining  
15 the place of residence, the following rules are to be observed:

16 (1) It is the place where a person remains when not called elsewhere for labor or other special or  
17 temporary purpose and to which the person returns in seasons of repose.

18 (2) There may ~~only~~ be only one residence. If a person claims a residence within Montana for any  
19 purpose, then that location is the person's residence for all purposes unless there is a specific statutory exception.

20 (3) A residence cannot be lost until another is gained.

21 (4) The residence of ~~a minor's parents or, if one of them is deceased or they do not share the same~~  
22 ~~residence, the residence of the parent having legal custody or, if neither parent has legal custody, the residence~~  
23 ~~of the parent with whom the minor customarily resides is the residence of the~~ an unmarried minor. In is:

24 (a) the residence of a minor's parents;

25 (b) if one of the parents is diseased or the parents do not share the same residence, the residence of  
26 the parent having legal custody;

27 (c) if neither parent has legal custody, the residence of the parent with whom the minor customarily  
28 resides; or

29 (d) if the conditions in [section 2] are met, the residence of a caretaker relative, as defined in [section

30 1].

1       (5) In the case of a controversy, the district court may declare which parental residence is the residence  
2 of an unmarried minor.

3       ~~(5)(6)~~ The Except as provided in [sections 1 through 3], the residence of an unmarried minor who has  
4 a parent living cannot be changed by either the minor's own act or that of the minor's guardian.

5       ~~(6)(7)~~ The residence can be changed only by the union of act and intent."  
6

7       **Section 5.** Section 20-5-412, MCA, is amended to read:

8       **"20-5-412. Definition -- parent-designated adult -- administration of glucagon -- training.** (1) As  
9 used in 20-5-413 and this section, "parent-designated adult" means a school district employee, selected by a  
10 parent, an individual who has executed a caretaker relative educational authorization affidavit pursuant to [section  
11 3], or a guardian of a diabetic student, who voluntarily agrees to administer glucagon to the student.

12       (2) A parent, an individual who has executed a caretaker relative educational authorization affidavit  
13 pursuant to [section 3], or a guardian of a diabetic student may designate an adult to administer glucagon to the  
14 student as provided in subsection (3). Written proof of the designation by a parent, an individual who has  
15 executed a caretaker relative educational authorization affidavit pursuant to [section 3], or a guardian and  
16 acceptance of the designation by the parent-designated adult must be filed with the school district.

17       (3) A parent-designated adult may administer glucagon to a diabetic student in an emergency situation.  
18 The glucagon must be provided by the parent, an individual who has executed a caretaker relative educational  
19 authorization affidavit pursuant to [section 3], or a guardian of the student.

20       (4) A parent-designated adult must be trained in recognizing hypoglycemia and the proper method of  
21 administering glucagon. Training must be provided by a health care professional, as defined in 33-36-103, or a  
22 recognized expert in diabetic care selected by the parent, an individual who has executed a caretaker relative  
23 educational authorization affidavit pursuant to [section 3], or a guardian. Written documentation of the training  
24 received by the parent-designated adult must be filed with the school district."  
25

26       **Section 6.** Section 20-5-420, MCA, is amended to read:

27       **"20-5-420. Self-administration of asthma medication.** (1) As used in this section, the following  
28 definitions apply:

29       (a) "Anaphylaxis" means a systemic allergic reaction that can be fatal in a short time period and is also  
30 known as anaphylactic shock.

1 (b) "Asthma" means a chronic disorder or condition of the lungs that requires lifetime, ongoing, medical  
2 intervention.

3 (c) "Medication" means a medicine, including inhaled bronchodilators, inhaled corticosteroids, and  
4 autoinjectable epinephrine, prescribed by a licensed physician as defined in 37-3-102, a physician assistant who  
5 has been authorized to prescribe asthma medications as provided in 37-20-404, or an advanced practice  
6 registered nurse with prescriptive authority as provided in 37-8-202(5).

7 (d) "Self-administration" means a pupil's discretionary use of the asthma medication prescribed for the  
8 pupil.

9 (2) A school, whether public or nonpublic, shall permit the self-administration of medication by a pupil  
10 with asthma if the parents or guardians of the pupil provide to the school:

11 (a) written authorization, acknowledging and agreeing to the liability provisions in subsection (4), for the  
12 self-administration of medication;

13 (b) a written statement from the pupil's physician, physician assistant, or advanced practice registered  
14 nurse containing the following information:

15 (i) the name and purpose of the medication;

16 (ii) the prescribed dosage; and

17 (iii) the time or times at which or the special circumstances under which the medication is to be  
18 administered;

19 (c) documentation that the pupil has demonstrated to the health care practitioner and the school nurse,  
20 if available, the skill level necessary to administer the medication as prescribed; and

21 (d) documentation that the pupil's physician, physician assistant, or advanced practice registered nurse  
22 has formulated a written treatment plan for managing asthma or anaphylaxis episodes of the pupil and for  
23 medication use by the pupil during school hours.

24 (3) The information provided by the parents or guardians must be kept on file in the office of the school  
25 nurse or, in the absence of a school nurse, the school's administrator.

26 (4) The school district or nonpublic school and its employees and agents are not liable as a result of any  
27 injury arising from the self-administration of medication by the pupil unless an act or omission is the result of gross  
28 negligence, willful and wanton conduct, or an intentional tort. The parents or guardians of the pupil must be given  
29 a written notice and sign a statement acknowledging that the school district or nonpublic school may not incur  
30 liability as a result of any injury arising from the self-administration of medication by the pupil and that the parents



or guardians shall indemnify and hold harmless the school district or nonpublic school and its employees and agents against any claims, except a claim based on an act or omission that is the result of gross negligence, willful and wanton conduct, or an intentional tort.

(5) The permission for self-administration of medication is effective for the school year for which it is granted and must be renewed each subsequent school year or, if the medication dosage, frequency of administration, or other conditions change, upon fulfillment of the requirements of this section.

(6) If the requirements of this section are fulfilled, a pupil with asthma may possess and use the pupil's medication:

(a) while in school;

(b) while at a school-sponsored activity;

(c) while under the supervision of school personnel;

(d) before or after normal school activities, such as while in before-school or after-school care on school-operated property; or

(e) while in transit to or from school or school-sponsored activities.

(7) If provided by the parent, an individual who has executed a caretaker relative educational authorization affidavit pursuant to [section 3], or a guardian and in accordance with documents provided by the pupil's physician, physician assistant, or advanced practice registered nurse, backup medication must be kept at a pupil's school in a predetermined location or locations to which the pupil has access in the event of an asthma or anaphylaxis emergency.

(8) Youth correctional facilities are exempt from this section and shall adopt policies related to access and use of asthma medications."

**Section 7.** Section 72-5-103, MCA, is amended to read:

**"72-5-103. Delegation of powers by parent or guardian.** (1) (a) A Subject to subsection (1)(b), a parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding 6 months, any powers regarding care, custody, or property of the minor child or ward, including the power to consent to an educational service or to enroll a child in school, in which case the residence of the person to whom the power is granted is, with the consent of that person, considered to be the residence of the child.

(b) except A power of attorney may not delegate the power to consent to marriage or adoption of a minor

1 ward.

2 (2) The 6-month limitation provided in subsection (1)(a) does not apply to:

3 (a) a member of the Montana national guard who serves for more than 180 continuous days on duty  
4 pursuant to Title 10 or 32 of the United States Code or on state active duty pursuant to Article VI, section 13, of  
5 the Montana constitution;

6 (b) a member of the active duty military forces of the United States; or

7 (c) a member of the federal reserves who serves for more than 180 continuous days on duty pursuant  
8 to Title 10 of the United States Code.

9 (3) As used in this section, "federal reserves" means the United States air force reserve, army reserve,  
10 navy reserve, marine corps reserve, or coast guard reserve."

11

12 **NEW SECTION. Section 8. Codification instruction.** [Sections 1 through 3] are intended to be codified  
13 as an integral part of Title 20, chapter 5, and the provisions of Title 20, chapter 5, apply to [sections 1 through 3].

14

15 **NEW SECTION. Section 9. Two-thirds vote required -- contingent voidness.** Because [section  
16 3(4)(a)] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds  
17 of the members of each house of the legislature for passage. If [this act] is not approved by at least two-thirds  
18 of the members of each house of the legislature, then the bracketed language in [section 3(4)(a)] and the  
19 bracketed language in the notice to school officials and health care providers in part 8b of [section 3(10)] is void.

20

21 **NEW SECTION. Section 10. Applicability.** [This act] applies to a caretaker relative to whom a minor  
22 is given by a parent, all as defined in [section 1], after October 1, 2007, for care by the relative.

23

- END -